

**REMARKS**

**Summary Of The Office Action & Formalities**

**Status of Claims**

Claims 1-40 are all the claims pending in the application. By this Amendment, Applicants are amending claims 1, 8, 20, 21, 30, and 37, and adding new claims 41-43. No new matter is added.

**Claim to Foreign Priority**

Applicants thank the Examiner for acknowledging the claim to foreign priority and for confirming that the certified copy of the priority document was received.

**Information Disclosure Statement**

Applicants also thank the Examiner for considering and initialing the references listed on the PTO/SB/08 submitted with the Information Disclosure Statement filed on January 17, 2006.

**Drawing Objections**

The drawings are objected to under 37 CFR 1.83(a). The Examiner states:

The drawings must show every feature of the invention specified in the claims. Therefore, the “spring” attached to a transmission element must be shown or the feature(s) canceled from the claim(s).

Applicants respectfully submit that the spring is shown in the drawings. Element 31, which comprises elements 32, 33a and 33b, shown in FIGS. 3-7, is an exemplary embodiment of a spring attached to the transmission element. For example, as described in the specification of the current application,

“said transmission element 34 also cooper[ates] with said flexible lug 31 . . . . [T]he flexible lug 31 may be provided with two flexible parts 32 and 33 of different flexibility.”

(Current application, page 9, lines 8-9, 23-25.)

The specification further states:

“the second lug part 33 advantageously comprises two branches 33a and 33b. These branches are preferably convex and attached firstly to the first lug part 32 and secondly to the transmission element 34. As can be seen FIGS. 3 to 7, these branches 33a and 33b may form an ovoid structure with two opposite apexes, one formed by said junction J and the other formed by said transmission element 34. Movement of the transmission element 34 therefore causes stretching of this ovoid structure which pulls on the first lug part 32. . . . Advantageously, branches 33a and 33b return elastically to their rest position after actuation.”

(Current application, page 10, line 24 to page 11, line 20.)

As such, the recited “spring” is adequately shown in FIGS. 3-7. Applicant respectfully requests that the Examiner withdraw the objection to the figures.

**Claim Rejections - § 112**

*Claims 38-40 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.*

The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The “transmission element attached to a spring” is not disclosed in the specification nor is it shown in the drawings.

Office Action at page 5.

Again, Applicant respectfully submits that the “transmission element attached to a spring” is adequately shown in the drawings and adequately described in the specification. As noted above, element 34 is a transmission element and elements 33a and 33b are springs in FIGS. 3-7. Furthermore, the written description describes elements 33a and 33b as being elastic. (See current application, page 10, line 24 to page 11, line 20.)

As such, Applicant respectfully requests that the Examiner withdraw the rejections of claims 38-40.

*Claims 1-37 are rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.*

The term "one part" in claim 1, 8, 20, 21, 30, 37 is a relative term which renders the claim indefinite. The term "one part" is not defined in the claims, the specification and does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Office Action at page 5.

Applicant is amending claims 1, 8, 20, 21, 30 and 37 to further clarify the claimed features. Claims 1, 8, 20, 21, 30 and 37 now recite "a moving part (54) of said dispensing device." Applicants submit that a moving part of said dispensing device is definite and adequately defined in the specification. For example, while the claims are not limited to this particular embodiment, FIG. 1 of the current application shows a moving part 54 of the dispensing device. Furthermore the written description provides by way of example that "as can be seen FIG. 1, said transmission element 34 is a shoulder joined to the flexible lug 31 and which cooperates with a part 54 of the fluid product dispensing device B which is mobile during actuation. In the example illustrated, this is the attachment ring 54 of the dose-measuring valve 52 on reservoir 51." (Current application, page 9, lines 10-18.) Again, Applicants note that the moving part is not limited to this particular embodiment. In view of this disclosure, however, one of ordinary skill in the art would be able to ascertain the meaning of "a moving part (54) of said dispensing device."

**Art Rejections**

1. Claims 1-40 are rejected on the ground of nonstatutory double patenting over claims 1-15 of US 7,275,660.
2. Claims 1-40 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-19 of copending Application No. 10/564,315.
3. Claims 1-40 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-19 of copending Application No. 10/542,507.
4. Claims 1, 8, 15, 19-21, 30, 36 and 37 are rejected under 35 U.S.C. § 102(b) as being anticipated by Ouyang et al. (US 2004/0149773).
5. Claims 1-40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Horlin (WO 01/37909 A1) in view of Fairbairn (GB 1,336,014).

Applicant respectfully traverses.

**Double Patenting**

1. *Claims 1-40 In View Of Claims 1-15 Of US 7,275,660.*

Applicants are hereby submitting a terminal disclaimer. As such, the double patenting rejection is now moot.

2. *Claims 1-40 In View Of Claims 1-19 Of Copending Application No. 10/564,315.*

Applicants are deferring to address these provisional rejections until a patent issues from the co-pending application.

3. *Claims 1-40 In View Of Claims 1-19 Of Copending Application No. 10/542,507.*

Applicants are deferring to address these provisional rejections until a patent issues from the co-pending application.

Claim Rejections - 35 U.S.C. § 102

4. Claims 1, 8, 15, 19-21, 30, 36 and 37 In View Of Ouyang et al. (US 2004/0149772).<sup>1</sup>

In rejecting claims 1, 8, 15, 19-21, 30, 36 and 37 in view of Ouyang et al. (US 2004/0149772), the grounds of rejection state:

In re claim 1 and 21, Ouyang et al. discloses a dose indicator (A) for fluid product dispensing device (1) comprising at least one rotary counting means (142) which can be moved in rotation, said at least one counting means comprising indication means (141) indicating the number of doses dispensed or remaining to be dispensed, said at least one counting means being actuated by an actuating member (143) itself actuated by a transmission element (144) adapted to cooperate with one part (149) of said dispensing device on each actuation thereof, characterized in that said dose indicator comprises amplification means adapted to amplify the movement of said transmission element (144) on each actuation, so that the movement of said actuating member (143) is greater than the movement of said transmission element (144).

Office Action at pages 6-7.

Regarding claims 1 and 21, Ouyang does not disclose at least the following:

**Claim 1:** “wherein said dose indicator comprises amplification means adapted to amplify the movement of said transmission element (34) on each actuation, so that the movement of said actuating member (35) is greater than the movement of said transmission element (34);”

**Claim 21:** “wherein said dose indicator comprises amplification means adapted to amplify the movement of said transmission element on each actuation, so that the movement of said actuating means is greater than the movement of said transmission element.”

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<sup>1</sup> The Examiner indicates in the Office action that claims 1-37 are rejected under Ouyang et al. (US 2004/0149773). The reference numerals used in the Examiner’s rejection, however, appear to correspond with Ouyang et al. (US 2004/0149772). As such, Applicant is addressing the rejection as if it were made under Ouyang et al. (US 2004/0149772).

The Examiner alleges that element 143 is an actuating member and that element 144 is a transmission element.

Element 143 in Ouyer is a deformable helical coil 143 co-operating with a movable part of the dispenser . (See Ouyer, '772, page 2, ¶ 0028; and by way of example Ouyer '773, page 2, ¶ 0026). In turn, the helical coil 143 engages the drum 144 via protrusions 156 on the helical coil 143 engaging recesses 161 in the drum 144. (See Ouyer, '772, page 2, ¶ 0029.) As such, the drum 144 only rotates the same distance that the upper ring of the helical coil 143 rotates. (See Ouyer, '772, page 2, ¶ 0029; see also Ouyer '773, page 2, ¶ 0027.) Thus, the movement of the drum 144 is not greater than the movement of the helical coil 143.

As such, Applicants respectfully request that the Examiner withdraw the rejection of independent claims 1 and 21.

Claims 2-20 and 22-37 are allowable at least by virtue of their respective dependencies from independent claims 1 and 21.

**Claim Rejections - 35 U.S.C. § 103**

***5. Claims 1-40 Over Horlin (WO 01/37909 A1) in view of Fairbairn (GB 1,336,014).***

In rejecting claims 1-40 over Horlin (WO 01/37909 A1) in view of Fairbairn (GB 1,336,014), the grounds of rejection state:

Horlin discloses an inhaler cartridge (4) that dispenses by pressing downwardly inside a holder channel (3) in order to trigger the dispensation (see figure 7) through passage (6), with a counter mechanism (2) with a cap (7) with a viewing window (10) to view a spiral set of number (21) to assist the user in knowing how many doses are used or left, the pin (32) is actuated when the inhaler cartridge (4) is pressed downwardly into the holder channel (3), the pin (32) flexes a tab (33) that flexes before the actuation of the inhaler cartridge (4), which in turn changes the viewed number (see figure 3a) with the use of the second relatively stiff flexible tabs (25 - 26) that actuate after the rotary wheel has commenced

rotating, the control wheel prevented from over actuating by a key slot (34 - 35), which will only allow the control wheel to actuate a certain distance, the control wheel prevented from rotating in the wrong direction by the end tabs (30 - 31), the entire counting device (2) integrated and assembled as one piece (7 - 9) (see figure 5).

Office Action at pages 7-9.

Again, Horlin does not disclose at least the following features of independent claims 1, 21, and 38:

**Claim 1:** “wherein said dose indicator comprises amplification means adapted to amplify the movement of said transmission element (34) on each actuation, so that the movement of said actuating member (35) is greater than the movement of said transmission element (34);”

**Claim 21:** “wherein said dose indicator comprises amplification means adapted to amplify the movement of said transmission element on each actuation, so that the movement of said actuating means is greater than the movement of said transmission element;”

**Claim 38:** “wherein the spring is shaped so that a given displacement of the transmission element causes a greater displacement of the actuation element.”

Horlin discloses a counter located outside the dispenser’s housing, with a control wheel 9 having a pin 32 entering in said housing and co-operating with the movable container during actuation. (See Horlin, page 13, lines 6-9; FIG. 7.) The axial movement of the container presses the pin 32 downwards, which results in the rotation of the control wheel 9, which in turn rotates counting wheel 8. (See Horlick, page 13, line 16 to page 14, line 2). The rotation of the counting wheel 8 is provided by the tongues 30 of the control wheel 9, during the return stroke of the container towards a rest position. (See Horlick, page 13, line 23 to page 14, line 1.)

The pin 32 and the tongues 30 are both located on a periphery of the control wheel 9. (See Horlin, FIG. 8.) Thus, the movement of the pin 32, which the Examiner appears to indicate is the transmission element, is the same (or less) as the tongues 30, which the Examiner appears to indicate are the actuation means. As such, there is no amplification of the movement of the tongues 30 with respect to the pin 32, and the counting wheel 8 would move the same distance as the control wheel 9 during actuation of the dispenser.

Thus, the cited prior art does not disclose all of the features of independent claims 1, 21 or 38. Claims 2-20, 22-37, 39 and 40 are allowable at least by virtue of their respective dependencies from independent claims 1, 21 and 38.

#### **New Claims**

For additional claim coverage merited by the scope of the invention, Applicant is adding new claims 41-43. Independent claim 41 is allowable because the cited prior art does not disclose at least, "an amplifier that amplifies the movement of the transmission element during each actuation, so that the displacement of the actuating member is greater than the displacement of the transmission element." Claims 42 and 43 are allowable at least by virtue of their dependency from independent claim 41.

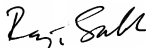
#### **Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.



The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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**23373**

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